

STATE OF TEXAS §
 §
COUNTY OF FORT BEND §

AGREEMENT FOR CONSTRUCTION MATERIALS INSPECTION AND TESTING SERVICES

THIS AGREEMENT ("Agreement") is made and entered into by and between Fort Bend County, (hereinafter "County"), a body corporate and politic under the laws of the State of Texas, and The Murillo Company (hereinafter "Consultant"), a company authorized to conduct business in the State of Texas (hereinafter each referred to as a "party" or collectively as the "parties").

WITNESSETH

WHEREAS, County desires that Consultant provide construction materials testing and inspection services concerning Brandt Road under Mobility Bond Project Numbers 17310 and 20310 (hereinafter "Services") pursuant to SOQ 14-025; and

WHEREAS, County has determined Consultant is the most highly qualified provider of the desired Services on the basis of demonstrated competence and qualifications, and County and Consultant have negotiated to reach a fair and reasonable amount of compensation for the provision of such Services, as required under Chapter 2254 of the Texas Government Code; and

WHEREAS, Consultant represents that it is qualified and desires to perform such Services; and

NOW, THEREFORE, in consideration of the mutual covenants and conditions set forth below, the parties agree as follows:

AGREEMENT

Section 1. Scope of Services

Consultant shall render the construction materials testing and inspection services as described in Consultant's proposal dated May 3, 2023, attached hereto as Exhibit A, and incorporated herein for all purposes.

Section 2. Personnel

2.1 Consultant represents that it presently has, or is able to obtain, adequate qualified personnel in its employment for the timely performance of the Scope of Services required under this Agreement and that Consultant shall furnish and maintain, at its own expense, adequate and sufficient personnel, in the opinion of County, to perform the Scope of Services when and as required and without delays.

2.2 All employees of Consultant shall have such knowledge and experience as will enable them to perform the duties assigned to them. Any employee of Consultant who, in the

opinion of County, is incompetent or by his conduct becomes detrimental to the project shall, upon request of County, immediately be removed from association with the project.

Section 3. Compensation and Payment

3.1 Consultant's fees shall be calculated at the rates set forth in the attached Exhibit A. The Maximum Compensation for the performance of Services within the Scope of Services described in Exhibit A is Two Hundred Eighty-Five Thousand, Six Hundred Fifty-Eight dollars and no/100 (\$285,658.00) as set forth in Exhibit A. In no case shall the amount paid by County under this Agreement exceed the Maximum Compensation without a written agreement executed by the parties.

3.2 All performance of the Scope of Services by Consultant including any changes in the Scope of Services and revision of work satisfactorily performed will be performed only when approved in advance and authorized by County.

3.3 County will pay Consultant based on the following procedures: Upon completion of the tasks identified in the Scope of Services, Consultant shall submit to County staff person designated by the County Engineer, one (1) electronic (pdf) copy of the invoice showing the amounts due for services performed in a form acceptable to County. County shall review such invoices and approve them within 30 calendar days with such modifications as are consistent with this Agreement and forward same to the Auditor for processing. County shall pay each such approved invoice within thirty (30) calendar days. County reserves the right to withhold payment pending verification of satisfactory work performed.

Section 4. Limit of Appropriation

4.1 Consultant clearly understands and agrees, such understanding and agreement being of the absolute essence of this Agreement, that County shall have available the total maximum sum of Two Hundred Eighty-Five Thousand, Six Hundred Fifty-Eight dollars and no/100 (\$285,658.00) specifically allocated to fully discharge any and all liabilities County may incur.

4.2 Consultant does further understand and agree, said understanding and agreement also being of the absolute essence of this Agreement, that the total maximum compensation that Consultant may become entitled to and the total maximum sum that County may become liable to pay to Consultant shall not under any conditions, circumstances, or interpretations thereof exceed Two Hundred Eighty-Five Thousand, Six Hundred Fifty-Eight dollars and no/100 (\$285,658.00).

Section 5. Time of Performance

Time for performance of the Scope of Services by Consultant under this Agreement shall begin with receipt of the Notice to Proceed from the County and end no later than December 31, 2026. Consultant shall complete the tasks described in the Scope of Services, within this time or within such additional time as may be extended by the County.

Section 6. Modifications and Waivers

6.1 The parties may not amend or waive this Agreement, except by a written agreement executed by both parties.

6.2 No failure or delay in exercising any right or remedy or requiring the satisfaction of any condition under this Agreement, and no course of dealing between the parties, operates as a waiver or estoppel of any right, remedy, or condition.

6.3 The rights and remedies of the parties set forth in this Agreement are not exclusive of, but are cumulative to, any rights or remedies now or subsequently existing at law, in equity, or by statute.

Section 7. Termination

7.1 Termination for Convenience – County may terminate this Agreement at any time upon forty-eight (48) hours written notice.

7.2 Termination for Default

7.2.1 County may terminate the whole or any part of this Agreement for cause in the following circumstances:

7.2.1.1 If Consultant fails to perform services within the time specified in the Scope of Services or any extension thereof granted by the County in writing;

7.2.1.2 If Consultant materially breaches any of the covenants or terms and conditions set forth in this Agreement or fails to perform any of the other provisions of this Agreement or so fails to make progress as to endanger performance of this Agreement in accordance with its terms, and in any of these circumstances does not cure such breach or failure to County's reasonable satisfaction within a period of ten (10) calendar days after receipt of notice from County specifying such breach or failure.

7.2.2 If, after termination, it is determined for any reason whatsoever that Consultant was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the County in accordance with Section 7.1 above.

7.3 Upon termination of this Agreement, County shall compensate Consultant in accordance with Section 3, above, for those services which were provided under this Agreement prior to its termination and which have not been previously invoiced to County. Consultant's final invoice for said services will be presented to and paid by County in the same manner set forth in Section 3 above.

7.4 If County terminates this Agreement as provided in this Section, no fees of any type, other than fees due and payable at the Termination Date, shall thereafter be paid to Consultant.

Section 8. Ownership and Reuse of Documents

All documents, data, reports, research, graphic presentation materials, etc., developed by Consultant as a part of its work under this Agreement, shall become the property of County upon completion of this Agreement, or in the event of termination or cancellation thereof, at the time of payment under Section 3 for work performed. Consultant shall promptly furnish all such data and material to County on request.

Section 9. Inspection of Books and Records

Consultant will permit County, or any duly authorized agent of County, to inspect and examine the books and records of Consultant for the purpose of verifying the amount of work performed under the Scope of Services. County's right to inspect survives the termination of this Agreement for a period of four years.

Section 10. Insurance

10.1 Prior to commencement of the Services, Consultant shall furnish County with properly executed certificates of insurance which shall evidence all insurance required and provide that such insurance shall not be canceled, except on 30 days' prior written notice to County. Consultant shall provide certified copies of insurance endorsements and/or policies if requested by County. Consultant shall maintain such insurance coverage from the time Services commence until Services are completed and provide replacement certificates, policies and/or endorsements for any such insurance expiring prior to completion of Services. Consultant shall obtain such insurance written on an Occurrence form (or a Claims Made form for Professional Liability insurance) from such companies having Best's rating of A/VII or better, licensed or approved to transact business in the State of Texas, and shall obtain such insurance of the following types and minimum limits:

10.1.1 Workers' Compensation insurance. Substitutes to genuine Workers' Compensation Insurance will not be allowed.

10.1.2 Employers' Liability insurance with limits of not less than \$1,000,000 per injury by accident, \$1,000,000 per injury by disease, and \$1,000,000 per bodily injury by disease.

10.1.3 Commercial general liability insurance with a limit of not less than \$1,000,000 each occurrence and \$2,000,000 in the annual aggregate. Policy shall cover liability for bodily injury, personal injury, and property damage and products/completed operations arising out of the business operations of the policyholder.

10.1.4 Business Automobile Liability insurance with a combined Bodily Injury/Property Damage limit of not less than \$1,000,000 each accident. The policy shall cover liability arising from the operation of licensed vehicles by policyholder.

10.1.5 Professional Liability insurance may be made on a Claims Made form with limits not less than \$1,000,000.

10.2 County and the members of Commissioners Court shall be named as additional insured to all required coverage except for Workers' Compensation and Professional Liability. All Liability policies including Workers' Compensation written on behalf of Consultant, excluding Professional Liability, shall contain a waiver of subrogation in favor of County and members of Commissioners Court. For Commercial General Liability, the County shall be named as an Additional Insured on a Primary & Non-Contributory basis.

10.3 If required coverage is written on a claims-made basis, Consultant warrants that any retroactive date applicable to coverage under the policy precedes the effective date of the contract; and that continuous coverage will be maintained or an extended discovery period will be exercised for a period of 2 years beginning from the time that work under the Agreement is completed.

10.4 Consultant shall not commence any portion of the work under this Agreement until it has obtained the insurance required herein and certificates of such insurance have been filed with and approved by Fort Bend County.

10.5 No cancellation of or changes to the certificates, or the policies, may be made without thirty (30) days prior, written notification to Fort Bend County.

10.6 Approval of the insurance by Fort Bend County shall not relieve or decrease the liability of Consultant.

Section 11. Indemnity

CONSULTANT SHALL INDEMNIFY AND HOLD HARMLESS COUNTY AGAINST LOSSES, LIABILITIES, CLAIMS, AND CAUSES OF ACTION, INCLUDING THE REIMBURSEMENT OF COUNTY'S REASONABLE ATTORNEYS FEES IN PROPORTION TO CONSULTANT'S LIABILITY, ARISING FROM ACTIVITIES OF CONSULTANT, ITS AGENTS, SERVANTS OR EMPLOYEES, PERFORMED UNDER THIS AGREEMENT THAT RESULT FROM THE NEGLIGENT ACT, INTENTIONAL TORT, ERROR, OR OMISSION OF CONSULTANT OR ANY OF CONSULTANT'S AGENTS, SERVANTS OR EMPLOYEES.

Section 12. Confidential and Proprietary Information

12.1 Consultant acknowledges that it and its employees or agents may, in the course of performing their responsibilities under this Agreement, be exposed to or acquire information that is confidential to County. Any and all information of any form obtained by Consultant or its employees or agents from County in the performance of this Agreement shall be deemed to be confidential information of County ("Confidential Information"). Any reports or other documents or items (including software) that result from the use of the Confidential Information by Consultant shall be treated with respect to confidentiality in the same manner as the Confidential Information. Confidential Information shall be deemed not to include information that (a) is or becomes (other than by disclosure by Consultant) publicly known or is contained in a publicly available document; (b) is rightfully in Consultant's possession without the obligation of nondisclosure prior to the time of its disclosure under

this Agreement; or (c) is independently developed by employees or agents of Consultant who can be shown to have had no access to the Confidential Information.

12.2 Consultant agrees to hold Confidential Information in strict confidence, using at least the same degree of care that Consultant uses in maintaining the confidentiality of its own confidential information, and not to copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties or use Confidential Information for any purposes whatsoever other than the provision of Services to County hereunder, unless disclosure is required by law or court order, and to advise each of its employees and agents of their obligations to keep Confidential Information confidential. Consultant shall use its best efforts to assist County in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limitation of the foregoing, Consultant shall advise County immediately in the event Consultant learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Agreement and Consultant will at its expense cooperate with County in seeking injunctive or other equitable relief in the name of County or Consultant against any such person. Consultant agrees that, except as directed by County, Consultant will not at any time during or after the term of this Agreement disclose, directly or indirectly, any Confidential Information to any person, and that upon termination of this Agreement or at County's request, Consultant will promptly turn over to County all documents, papers, and other matter in Consultant's possession which embody Confidential Information; provided however, that Consultant may retain one (1) copy of all work product produced which incorporates confidential information for its internal record-keeping purposes, subject to the terms of the Agreement.

12.3 Consultant acknowledges that a breach of this Section, including disclosure of any Confidential Information, or disclosure of other information that, at law or in equity, ought to remain confidential, will give rise to irreparable injury to County that is inadequately compensable in damages. Accordingly, County may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies that may be available. Consultant acknowledges and agrees that the covenants contained herein are necessary for the protection of the legitimate business interest of County and are reasonable in scope and content.

12.4 Consultant in providing all services hereunder agrees to abide by the provisions of any applicable Federal or State Data Privacy Act.

12.5 Consultant expressly acknowledges that County is subject to the Texas Public Information Act, TEX. GOV'T CODE ANN. §§ 552.001 *et seq.*, as amended, and notwithstanding any provision in the Agreement to the contrary, County will make any information related to the Agreement, or otherwise, available to third parties in accordance with the Texas Public Information Act. Any proprietary or confidential information marked as such provided to County by Consultant shall not be disclosed to any third party, except as directed by the Texas Attorney General in response to a request for such under the Texas Public Information Act, which provides

for notice to the owner of such marked information and the opportunity for the owner of such information to notify the Attorney General of the reasons why such information should not be disclosed. The terms and conditions of this Agreement are not proprietary or confidential information.

12.6 Consultant expressly acknowledges that County is subject to the Texas Open Meetings Act, TEX. GOV'T CODE ANN. §§ 551.001 *et seq.*, as amended, and notwithstanding any provision in the Agreement to the contrary, County will comply with the provisions of the Texas Open Meetings Act in relation to the Agreement.

Section 13. Independent Consultant

13.1 In the performance of work or services hereunder, Consultant shall be deemed an independent contractor, and any of its agents, employees, officers, or volunteers performing work required hereunder shall be deemed solely as employees of contractor or, where permitted, of its subcontractors.

13.2 Consultant and its agents, employees, officers, or volunteers shall not, by performing work pursuant to this Agreement, be deemed to be employees, agents, or servants of County and shall not be entitled to any of the privileges or benefits of County employment.

Section 14. Notices

14.1 Each party giving any notice or making any request, demand, or other communication (each, a "Notice") pursuant to this Agreement shall do so in writing and shall use one of the following methods of delivery, each of which, for purposes of this Agreement, is a writing: personal delivery, registered or certified mail (in each case, return receipt requested and postage prepaid), or nationally recognized overnight courier (with all fees prepaid).

14.2 Each party giving a Notice shall address the Notice to the receiving party at the address listed below or to another address designated by a party in a Notice pursuant to this Section:

County:	Fort Bend County Engineering Department Attn: County Engineer 301 Jackson Street, 4 th Floor Richmond, Texas 77469
With a copy to:	Fort Bend County Attn: County Judge 401 Jackson Street, 1 st Floor Richmond, Texas 77469
Consultant:	The Murillo Company Attn: <u>DONNA MURILLO</u> 10325 Landsbury, Suite 400 Houston, Texas 77099

14.3 A Notice is effective only if the party giving or making the Notice has complied with subsections 14.1 and 14.2 and if the addressee has received the Notice. A Notice is deemed received as follows:

14.3.1 If the Notice is delivered in person, or sent by registered or certified mail or a nationally recognized overnight courier, upon receipt as indicated by the date on the signed receipt.

14.3.2 If the addressee rejects or otherwise refuses to accept the Notice, or if the Notice cannot be delivered because of a change in address for which no Notice was given, then upon the rejection, refusal, or inability to deliver.

Section 15. Compliance with Laws

Consultant shall comply with all federal, state, and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts or administrative bodies or tribunals in any matter affecting the performance of this Agreement, including, without limitation, Worker's Compensation laws, minimum and maximum salary and wage statutes and regulations, licensing laws and regulations. When required by County, Consultant shall furnish County with certification of compliance with said laws, statutes, ordinances, rules, regulations, orders, and decrees above specified.

Section 16. Standard of Care

16.1 Consultant represents shall perform the Services to be provided under this Agreement with the professional skill and care ordinarily provided by competent consultant practicing under the same or similar circumstances and professional license. Further, Consultant shall perform the Services as expeditiously as is prudent considering the ordinary professional skill and care of a competent consultant.

16.2 Consultant represents to County that the Services will be free from material errors and will materially conform to all requirements and specifications contained in the attached Exhibit A.

Section 17. Assignment

17.1 Neither party may assign any of its rights under this Agreement, except with the prior written consent of the other party. That party shall not unreasonably withhold its consent. All assignments of rights are prohibited under this subsection, whether they are voluntarily or involuntarily, by merger, consolidation, dissolution, operation of law, or any other manner.

17.2 Neither party may delegate any performance under this Agreement.

17.3 Any purported assignment of rights or delegation of performance in violation of this Section is void.

Section 18. Applicable Law

The laws of the State of Texas govern all disputes arising out of or relating to this Agreement. The parties hereto acknowledge that venue is proper in Fort Bend County, Texas, for all legal actions or proceedings arising out of or relating to this Agreement and waive the right to sue or be sued elsewhere. Nothing in the Agreement shall be construed to waive the County's sovereign immunity. County does not agree to submit disputes arising out of the Agreement to binding arbitration. Therefore, any references to binding arbitration or the waiver of a right to litigate a dispute are hereby deleted. County does not agree to pay any and/or all attorney fees incurred by Consultant in any way associated with the Agreement.

Section 19. Successors and Assigns

County and Consultant bind themselves and their successors, executors, administrators and assigns to the other party of this Agreement and to the successors, executors, administrators and assigns of the other party, in respect to all covenants of this Agreement.

Section 20. Third Party Beneficiaries

This Agreement does not confer any enforceable rights or remedies upon any person other than the parties.

Section 21. Severability

If any provision of this Agreement is determined to be invalid, illegal, or unenforceable, the remaining provisions remain in full force, if the essential terms and conditions of this Agreement for each party remain valid, binding, and enforceable.

Section 22. Publicity

Contact with citizens of Fort Bend County, media outlets, or governmental agencies shall be the sole responsibility of County. Under no circumstances whatsoever, shall Consultant release any material or information developed or received in the performance of the Services hereunder without the express written permission of County, except where required to do so by law.

Section 23. Captions

The section captions used in this Agreement are for convenience of reference only and do not affect the interpretation or construction of this Agreement.

Section 24. Conflict

In the event there is a conflict between this Agreement and the attached exhibit, this Agreement controls.

Section 25. Certain State Law Requirements for Contracts

For purposes of sections 2252.152, 2271.002, and 2274.002, Texas Government Code, as amended, Consultant hereby verifies that Consultant and any parent company, wholly owned subsidiary, majority-owned subsidiary, and affiliate:

25.1 Unless affirmatively declared by the United States government to be excluded from its federal sanctions regime relating to Sudan or Iran or any federal sanctions regime relating to a foreign terrorist organization, is not identified on a list prepared and maintained by the Texas Comptroller of Public Accounts under Section 806.051, 807.051, or 2252.153 of the Texas Government Code.

25.2 If employing ten (10) or more full-time employees and this Agreement has a value of \$100,000.00 or more, Consultant does not boycott Israel and is authorized to agree in such contracts not to boycott Israel during the term of such contracts. "Boycott Israel" has the meaning provided in section 808.001 of the Texas Government Code.

25.3 If employing ten (10) or more full-time employees and this Agreement has a value of \$100,000.00 or more, Consultant does not boycott energy companies and is authorized to agree in such contracts not to boycott energy companies during the term of such contracts. "Boycott energy company" has the meaning provided in section 809.001 of the Texas Government Code.

25.4 If employing ten (10) or more full-time employees and this Agreement has a value of \$100,000.00 or more, Consultant does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and is authorized to agree in such contracts not to discriminate against a firearm entity or firearm trade association during the term of such contracts. "Discriminate against a firearm entity or firearm trade association" has the meaning provided in section 2274.001(3) of the Texas Government Code. "Firearm entity" and "firearm trade association" have the meanings provided in section 2274.001(6) and (7) of the Texas Government Code.

Section 26. Human Trafficking

BY ACCEPTANCE OF AGREEMENT, CONSULTANT ACKNOWLEDGES THAT THE COUNTY IS OPPOSED TO HUMAN TRAFFICKING AND THAT NO COUNTY FUNDS WILL BE USED IN SUPPORT OF SERVICES OR ACTIVITIES THAT VIOLATE HUMAN TRAFFICKING LAWS.

(Execution Page Follows)

(Remainder of Page Intentionally Left Blank)

IN WITNESS WHEREOF, the parties hereto have signed or have caused their respective names to be signed to multiple counterparts to be effective on the date signed by the last party hereto.

FORT BEND COUNTY

THE MURILLO COMPANY

KP George, County Judge



Authorized Agent – Signature

Date

Donna Murillo

Authorized Agent – Printed Name

ATTEST:

E.V.P.

Title

Laura Richard, County Clerk

7.27.2023

Date

APPROVED:



J. Stacy Slawinski, P.E., County Engineer

AUDITOR'S CERTIFICATE

I hereby certify that funds are available in the amount of \$ _____ to accomplish and pay the obligation of Fort Bend County under this contract.

Robert Ed Sturdivant, County Auditor

Exhibit A: Consultant's proposal dated May 3, 2023

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EXHIBIT A

May 3, 2023

Schaumburg & Polk, Inc.
11767 Katy Freeway, Suite 900
Houston, Texas 77079

Attn: Mr. Mark C. Dessens, P.E.

Re: Materials Testing Services
Brandt Road
Precinct Line Road to Mason Road
Fort Bend County, Texas

We are pleased to submit our budgetary estimate to administer the Materials Testing and Inspection during construction for the above referenced project.

The estimated testing costs based upon information provided by Client, may vary due to construction schedules, weather, or additional testing requested. All invoices will be in accordance with the actual unit cost. All prices will remain valid for a period of six months.

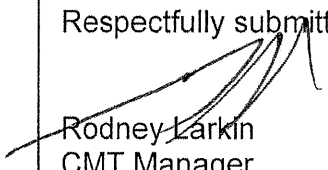
All hourly work will be charged on a portal to portal basis from our laboratory. Overtime is billed at 1½ times the unit rate for hours worked in excess of 8 hours per day Monday thru Friday, all day Saturday, Sunday or Holidays. A minimum 24 hours advance notice of any desired material testing to be conducted is required. It is understood that our services are performed on a "CALL OUT BASIS." We will not be held responsible for any tests not performed in areas requiring testing, due to failure to notify this office.

We can proceed with this project upon receipt of the attached Agreement and Deposit. To perform our services we require a complete set of civil and structural plans along with the concrete mix designs. Testing Reports will NOT be issued until we receive the above material in our office.

Our laboratory maintains Professional Liability Insurance and meets the requirements of ASTM E-329, a recommended practice for Inspection and Testing Agencies for Concrete and Steel, as used in construction.

Thank you for this opportunity to submit this proposal for your consideration.

Respectfully submitted,



Rodney Larkin
CMT Manager
Texas Registration No. F-2911

COST ESTIMATE

Description of Services	Unit Rate		Quantity		Total
Soils Testing					
Certified Technician	\$ 65.00	hour	800	hours	\$ 52,000.00
Technician, Non-Certified	\$ 43.00	hour	120	hours	\$ 5,160.00
Liquid & Plastic Limits	\$ 62.00	each	60	each	\$ 3,720.00
Percent Passing No. 200 Sieve	\$ 48.00	each	20	each	\$ 960.00
OMD Standard Compaction	\$ 204.00	each	20	each	\$ 4,080.00
OMD Standard Compaction, Treated	\$ 225.00	each	16	each	\$ 3,600.00
Nuclear Density Equipment Rental	\$ 40.00	day	100	day	\$ 4,000.00
Vehicle Charge	\$ 60.00	trip	100	trip	\$ 6,000.00
				Sub-Total	\$ 79,520.00
Drill Shaft Inspection					
Certified Technician	\$ 65.00	hour	640	hours	\$ 41,600.00
Cylinder Test (ASTM C-39)	\$ 20.00	hour	640	hours	\$ 12,800.00
Vehicle Charge	\$ 60.00	trip	80	trip	\$ 4,800.00
				Sub-Total	\$ 60,600.00
Asphalt					
Asphalt Technician	\$ 65.00	hour	400	hours	\$ 26,000.00
Asphaltic Mix Design Review	\$ 250.00	hour	4	hours	\$ 1,000.00
Extraction Tests	\$ 280.00	each	32	each	\$ 8,960.00
Specific Gravity	\$ 82.00	each	32	each	\$ 2,624.00
Asphalt Content	\$ 92.00	each	32	each	\$ 2,944.00
Asphaltic Concrete Specimens Molding	\$ 72.00	each	32	each	\$ 2,304.00
Hveem Stability	\$ 108.00	each	32	each	\$ 3,456.00
Nuclear Gauge	\$ 40.00	day	50	day	\$ 2,000.00
Vehicle Charge	\$ 60.00	trip	50	trip	\$ 3,000.00
				Sub-Total	\$ 52,288.00
Weld & Bolt Inspection (Sub-contracted Service)					
Visual Weld Inspection Hours	\$ 125.00	hour	24	hours	\$ 3,000.00
Structural Bolt Inspection Hours	\$ 125.00	hour	24	hours	\$ 3,000.00
Vehicle Charge	\$ 60.00	trip	48	trips	\$ 2,880.00
				Sub-Total	\$ 8,880.00
Concrete Testing					
Certified Technician	\$ 65.00	hour	528	hours	\$ 34,320.00
Cylinder Test (ASTM C-39)	\$ 20.00	hour	792	hours	\$ 15,840.00
Concrete Pavement Cores	\$ 70.00	each	56	each	\$ 3,920.00
Cap & Test Cores	\$ 30.00	each	56	each	\$ 1,680.00
Vehicle Charge	\$ 60.00	trip	66	trip	\$ 3,960.00
				Sub-Total	\$ 59,720.00
Professional Services					
Project Engineer, P.E. Hours	\$ 250.00	hour	40	hours	\$ 10,000.00
CMT Department Manager Hours	\$ 115.00	hour	70	hours	\$ 8,050.00
Administrative / Clerical Hours	\$ 60.00	hour	110	hours	\$ 6,600.00
				Sub-Total	\$ 24,650.00
				TOTAL	\$ 285,658.00

THE MURILLO COMPANY

Geotechnical & Environmental Consultants

10325 Landsbury, Suite 400 • Houston, Texas 77099-4299 • (281) 933-9702 • Fax (281) 933-1051

AGREEMENT FOR MATERIALS TESTING SERVICES

THE AGREEMENT

This AGREEMENT is by and between THE MURILLO COMPANY, ("CONSULTANT") and SCHAUMBURG & POLK, INC. ("CLIENT"). This AGREEMENT between the parties listed consist of the terms and condition set forth here, identified as Material Testing Services Proposal dated May 3, 2023, for the following project; **Brandt Road, Precinct Line Road to Mason Road, Fort Bend County, Texas**, as outlined by the Materials Testing Service Proposal which is attached to this AGREEMENT. Together these elements will constitute the entire AGREEMENT.

TERMS AND CONDITIONS

CONSULTANT agrees to provide Material Testing and other technical services for the CLIENT in accordance with the rates set forth in this Agreement for a fee of **\$ 285,658.00.**

ARTICLE 1. SERVICES

Consultant will:

- 1.1 Act for CLIENT with the professional skill and care ordinarily provided by competent Geotechnical consultants practicing under the same or similar circumstances and professional license.
- 1.2 Provide those services requested of CONSULTANT and for which CONSULTANT is adequately staffed and equipped to perform.
- 1.3 Perform all technical services under the direction of a Registered Professional Engineer and in accordance with the basic requirements of the appropriate Standards of The American Society of Testing and Materials where applicable. Alternate standards mutually agreeable to the CONSULTANT and CLIENT may also be used.
- 1.4 Consider all reports to be the confidential property of CLIENT, and distribute reports only to those persons, organizations or agencies specifically designated in writing by CLIENT or his authorized representative.
- 1.5 Retain records relating to the services performed for a period of five years following submission of the report, during which period the records will be made available to CLIENT at all reasonable times and fees in effect at the time of the request.

ARTICLE 2. CLIENT'S RESPONSIBILITIES

CLIENT or his authorized representative will:

- 2.1 Notify CONSULTANT a minimum of 24 hours in advance of any desired material testing, and must specify what testing CLIENT desires to be conducted. It is the CLIENT'S responsibility to have CONSULTANT notified of any desired testing. CLIENT acknowledges that CONSULTANTS services are performed on a "call out basis" and CONSULTANT is not responsible if testing is not performed due to CONSULTANT not being timely notified of the time and nature of testing desired.
- 2.2 Provide CONSULTANT full information regarding conceptual design data related to Materials Testing Services considerations for the project, locations of existing underground utilities and any knowledge of past history which suggests special consideration, performance requirements for the proposed project which may deviate from the norm, changes in aforementioned considerations as the project progresses through construction completion which may relate to Materials Testing considerations for the project, and other information for the proper performance of CONSULTANT. CONSULTANT shall be entitled to rely upon the accuracy and completeness of all such information provided by the CLIENT.
- 2.3 Furnish right of entry onto the project site for CONSULTANT to make the necessary field studies. CONSULTANT will endeavor to preserve the land but make no guarantee to restore the site to its original condition unless a separate agreement is made for such restoration, in which case CONSULTANT shall add the cost of restoration to the fee for the project.
- 2.4 Designate in writing those responsible persons, organizations or agencies to be contacted in the event conditions are revealed during the execution of CONSULTANT'S study that would require possible alteration of the study or would potentially influence design that is proceeding in parallel with the study. The responsible party shall have authority to issue change order to the contract.
- 2.5 Guarantees to CONSULTANT that the CLIENT is not a minor, that the CLIENT otherwise has the legal capacity to enter into this contract, or if a corporation that the signatory is duly authorized to enter into this contract and bind the corporation, and that sufficient monies are available to fund CONSULTANT'S fee.

THE MURILLO COMPANY

Geotechnical & Environmental Consultants

10325 Landsbury, Suite 400 • Houston, Texas 77099-4299 • (281) 933-9702 • Fax (281) 933-1051

ARTICLE 3. GENERAL CONDITIONS

3.1 CONSULTANT, by the performance of services covered hereunder, does not in any way assume, abridge or abrogate any of those duties, responsibilities or authorities with regard to the project customarily vested in the project architects, design engineers, or any other design agencies or authorities.

3.2 CONSULTANT shall not be responsible for acts or omissions of any party or parties involved in the design of the project or the failure of any contractor or subcontractor to construct any item on the project in accordance with recommendations contained in any correspondence or verbal recommendation issued by CONSULTANT.

3.3 This AGREEMENT may be terminated by either party on receipt of written notice or by mutual agreement. If this AGREEMENT is terminated by either party, CONSULTANT shall be paid in full for all services performed through the termination date, and the CLIENT shall then be provided with a complete report of the results of tests and analysis conducted prior to termination.

3.4 CLIENT may not delegate, assign, sublet or transfer its duties or interest in this AGREEMENT without the written consent of CONSULTANT. CONSULTANT may delegate, assign, sublet or transfer its duties hereunder without the written consent of CLIENT, but CONSULTANT shall be made responsible for the completion of its duties. CONSULTANT may not delegate, assign or transfer its interest in this AGREEMENT without the written consent of CLIENT.

3.5 In view of the relative risks and rewards of this project, CLIENT agrees to limit any and all liability of CONSULTANT for damages including costs of defense and expenses, on account of any design defect, error, omissions, professional negligence, breach of contract or breach of warranty to the sum of \$50,000 or the amount of CONSULTANT'S fee, whichever is greater.

ARTICLE 4. INSURANCE

4.1 CONSULTANT shall secure and maintain throughout the full period of this AGREEMENT insurance to protect it from claims under applicable Workmen's Compensation Acts and from claims for bodily injury, death or property damage as may arise from the performance of services under this AGREEMENT. CONSULTANT will, upon request, file certificate of such insurance coverage with CLIENT or his authorized representative.

4.2 No insurance, of whatever kind or type, which may be carried by CONSULTANT, is to be considered as in any way limiting the contractor's or subcontractor's responsibility for damages resulting from his operations or for furnishing work and material to the project. CLIENT agrees to include, or cause to be included in the project's construction contract requirements for insurance coverage and performance bonds to be secured and maintained by the project contractor as CLIENT deems adequate to indemnify CLIENT, CONSULTANT, and other concerned parties, against claims for damages and to insure compliance of work performance and materials with project requirements.

ARTICLE 5. CONSEQUENTIAL DAMAGES

Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law, neither the Client nor the Consultant, their respective officers, directors, partners, employees, contractors or subconsultants shall be liable to the other or shall make any claim for any incidental, indirect or consequential damages arising out of or connected in any way to the Project or to this Agreement. This mutual waiver of consequential damages shall include, but is not limited to, loss of use, loss of profit, loss of business, loss of income, loss of reputation and any other consequential damages that either party may have incurred from any cause of action including negligence, strict liability, breach of contract and breach of strict or implied warranty. Both the Client and the Consultant shall require similar waivers of consequential damages protecting all the entities or persons named herein in all contracts and subcontracts with others involved in this project.

ARTICLE 6. PAYMENT

6.1 CLIENT will pay CONSULTANT for services and expenses in accordance with the attached fee schedule. CONSULTANT'S invoices will be presented at the completion of its work or monthly and will be due and payable upon receipt.

6.2 CONSULTANT shall be paid in full for all services under the AGREEMENT, including any overruns of CLIENT'S contract of any unforeseen need for CONSULTANT'S services exceeding original contract requirements. Payment for such service shall be made irrespective of any claim by CLIENT for an offset or credit. Any such claim shall in no respect delay payment of fees for services performed by CONSULTANT.

THE MURILLO COMPANY

Geotechnical & Environmental Consultants

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ARTICLE 7. EXTENT OF AGREEMENT

The AGREEMENT, including these terms and conditions, represents the entire agreement between CLIENT and CONSULTANT and supersedes all prior negotiations, representations or agreements, written or oral. The AGREEMENT may be amended only in writing and signed by CLIENT and CONSULTANT.

ARTICLE 8. APPLICABLE LAW

8.1 The AGREEMENT shall be governed by the laws of the State of Texas.

8.2 The AGREEMENT is performable in whole or in part in Harris County, Texas.

ARTICLE 9. MEDIATION

Prior to the initiation of any legal proceedings, the parties agree to submit all claims, disputes or controversies arising out of or in relation to the interpretation, application or enforcement of this AGREEMENT to non-binding mediation. Mediation shall be conducted under the auspices of the American Arbitration Association or such other mediation services or mediator upon which the parties agree. The party seeking to initiate mediation shall do so by submitting a formal written request to the other party to this AGREEMENT. This ARTICLE shall survive completion or termination of this AGREEMENT, but under no circumstances shall either party call for mediation of any claim or dispute arising out of this AGREEMENT after such period of time as would normally bar the initiation of legal proceedings to litigate such claim or dispute under laws of the State of Texas.

If any of the provision contained in this AGREEMENT are held illegal, invalid, or unenforceable, the enforce ability of the remaining provision will not be impaired. Limitation of liability and indemnities will survive termination of the AGREEMENT for any cause.

The Parties have read the foregoing, understand completely the terms, and willingly enter into this AGREEMENT which will become effective on the date signed by the CLIENT below.

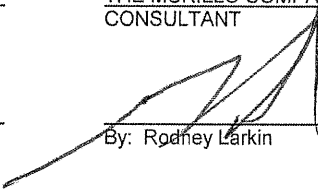
CLIENT

By _____

Title

Date

THE MURILLO COMPANY
CONSULTANT


By: Rodney Larkin

CMT Manager
Title

May 3, 2023
Date